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Three Empire State Plaza, Albany, NY 12223-1350  
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October 26, 2018

**VIA ELECTRONIC MAIL**

Honorable Maureen Leary  
Honorable Dakin Lecakes  
Administrative Law Judges  
New York State Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case 18-E-0067 and 18-G-0068 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric and Gas Service.

Dear Judges Leary and Lecakes:

By this letter, Department of Public Service Staff (Department Staff) responds to Ms. Kopald’s October 18, 2018 application for the issuance of a subpoena duces tecum in the above-captioned proceedings (“Application”). In her Application, Ms. Kopald seeks an extensive list of documentation from Aclara Meters LLC, Aclara Smart Grid Solutions, LLC and Aclara Technologies LLC (collectively referred to as “Aclara”), including (1) all documents related to a certain study conducted by Frank Bernardus Johannes Leferink, Cornelis H.A. Keyer and Anton Melentjev, which addressed static energy meter errors caused by conducted electromagnetic interference; (2) all documents related to the effects of dimmer switches on the performance of meters; and (3) all documents related to meter failure rates.<sup>1</sup>

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<sup>1</sup> Although not specifically identified, the meters referenced by Ms. Kopald in her Application are the Aclara GE I-210+c and Aclara kV2c EPS (collectively referred to as “the Aclara meters”), which were approved in Cases 16-E-0242 and 16-E-0366, respectively. Orange and Rockland Utilities, Inc. (“O&R” or “the Company”) is in the process of installing the Aclara meters as part of its Advanced Metering Infrastructure (“AMI”) program.

This Application is another attempt by Ms. Kopald to undermine the rate case process by improperly expanding the scope of discovery in an effort to revisit a prior Commission determination, in this case, the approval of the Aclara meters. In doing so, Ms. Kopald continues to wholly disregard the multiple rulings issued in these proceedings that specifically addressed and defined the scope of discovery herein. As stated in the first of these rulings, the September 10, 2018 Ruling Denying O&R's Motion to Strike Testimony, and repeated in later rulings, "the issues in these rate proceedings are limited to the ratemaking mechanics of incorporating the AMI expenditures into rates, albeit with the opportunity to review the expenditures for their reasonable conformance with the prior Commission approval in [Case 17-M-0178]."<sup>2</sup> These rulings appropriately rejected Ms. Kopald's efforts to revisit the Commission's approval of O&R's AMI program and, for the same reasons stated therein, this attempt by Ms. Kopald to reexamine the Commission's approval of the Aclara meters should similarly be denied.

Ms. Kopald makes a superficial attempt to demonstrate the relevance of the requested documentation; however, neither the accuracy nor the performance of the meters has any legitimate bearing on the issues in these rate proceedings (*i.e.*, the ratemaking mechanics of incorporating AMI costs into rates and the design of the opt-out fee). Additionally, Ms. Kopald's assertion that the information she seeks through the Application "will help to assess the proper depreciation rate of [the Aclara] meters" is similarly lacking in substance. Presumably, Ms. Kopald attempts to argue that the documentation she seeks will address the average service lives of the meters, which in turn affects the depreciation rates. As explained in O&R's October 23, 2018 letter responding to the Application, the Company used a 20-year meter life-span, which is the general industry-wide standard for such meters. If over time legitimate evidence surfaces to suggest that the average service lives of the Aclara meters are either shorter or longer than 20 years, an adjustment will be made to the depreciation rates; however, at this time, there is a sound basis for using a 20-year meter life-span and Ms. Kopald's attempt to serve this extensive documentation production request on the basis of pure speculation should be rejected.

There was an opportunity to challenge the accuracy and performance of the Aclara meters in Cases 16-E-0242 and 16-E-0366 prior to, and immediately following, the Commission's approval of those meters.<sup>3</sup> As duly noted in the Ruling Denying O&R's Motion to Strike Testimony (p. 27), "A subsequent rate proceeding cannot be used to circumvent proper procedural avenues for challenging prior Commission orders, particularly when there is no indication the Commission is inclined to revisit its authorization." The Commission approved

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<sup>2</sup> This point was repeated almost verbatim in the September 21, 2018 Ruling Denying Motions to Submit Supplemental Testimony (p. 6). In addition, the September 28, 2018 Ruling Memorializing September 20, 2018 Conference to Resolve Discovery Disputes stated, "O&R's capital costs and expenses related to the AMI program are at issue here, as is the design of O&R's proposed opt-out fee" (p. 2).

<sup>3</sup> In each case, pursuant to the State Administrative Procedure Act §202(1), a Notice of Proposed Rulemaking was published in the State Register inviting public comment. No public comments were received in either case.

the Aclara meters after thorough and rigorous testing both by an independent laboratory and Department Staff, and the Commission has not expressed any intent to revisit that authorization. Ms. Kopald's belated and baseless inquiry into the Commission's approval of the Aclara meters through the instant rate proceedings is improper and should be denied.

For all the reasons stated herein, Department Staff respectfully requests that Ms. Kopald's Application be denied in its entirety.

Respectfully Submitted,

/s/ Lindsey N. Overton Orietas

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